SUBMISSION TO THE

HOUSE OF COMMONS FINANCE COMMITTEE

ON

BILL C-4, The Economic Action Plan 2013 No. 2

BY THE

PUBLIC SERVICE ALLIANCE OF CANADA

NOVEMBER 26, 2013

INTRODUCTION

The Public Service Alliance of Canada is very pleased to have the opportunity to address the Committee. As the largest union in the federal public service representing over 180,000 members from coast to coast to coast, we have long advocated for changes to the legislation under which we operate in this sector.

From our perspective, the *Public Service Labour Relations Act* (PSLRA) is an imperfect piece of legislation in need of change and modernization. Our position has long been that the PSLRA and its predecessor pieces of legislation should be replaced by the *Canada Labour Code* (Code) or similar legislation. In our view, the Code more appropriately reflects the collective bargaining relationship between the union and the employer, which more accurately reflects the wishes and aspirations of our members, over 140,000 of whom work in the federal public service.

That being said, both the process and content of Bill C-4 fail to provide a framework for the responsible change and modernization of the federal labour relations framework governing federal public sector workers.

We are deeply concerned about the manner in which the proposed changes were tabled in Parliament on October 22, 2013, through a budget bill. This manner of proposing changes underlines the secretive, unilateral process that led to their introduction. This does not meet, by any measure, the most basic standards of transparency and accountability. At a time where federal public sector workers are facing job cuts, low morale and public attacks by this government, these proposed changes send a clear message that their employer does not respect their work and service to their country.

Furthermore, the PSAC wishes to convey our firmly held view that the proposals in the Bill systematically remove the tools by which the parties are able to achieve labour peace. This represents an attack on free collective bargaining in a democratic society and the positive role that it plays in fostering harmonious workplaces and maintaining the quality public services that are central to the public interest.

This is unprecedented in the history of federal labour law reform over the past decades, which has in the past taken place only following broad processes of consultation, and through stand-alone legislation subject to proper debate and consideration by Members of Parliament. Rather than modernizing labour relations, Bill C-4 represents a step backwards. These proposals, if passed, will weaken or take away well-established mechanisms to ensure effective resolution of disputes. They have the effect of tipping the balance even more strongly in favour of the employer and the government by limiting the rights of union members and restricting the role of the labour relations boards and adjudicators that have long played a key role in dispute resolution. There appears to be no limit when it comes to this government rewriting the rules in its own favour, in order to implement its own agenda.

The PSAC is proposing true modernization of the labour regime governing federal public sector workers, one that recognizes and respects their rights and would bring the regime in line with the labour law framework present in the private sector in other Canadian jurisdictions.

The PSAC has a number of specific concerns about Bill C-4, and they are set out below. For the reasons outlined, we simply do not believe that the revisions as proposed should be made to the legislation. Our position remains that the key stakeholders should enter into discussions aimed at truly reforming the labour law regime rather than simply unilaterally removing rights and that federal public sector workers ought to be brought under the jurisdiction of the *Canada Labour Code*, or new legislation that incorporates its principles.

PART A: TIPPING THE BALANCE IN THE EMPLOYER'S FAVOUR: A FUNDAMENTAL CHANGE IN APPROACH TO LABOUR RELATIONS

This legislation places in jeopardy the great compromise that led to modern labour legislation, which in return for labour peace, provides for effective dispute resolution governed by a system of laws which recognize the fundamental principles of freedom of association, right to strike and in certain circumstances third party intervention through interest arbitration.

This Bill represents an attack on the collective bargaining and recourse rights of union members. Rather than foster a climate that encourages the effective resolution of disputes and harmonious labour relations, this government is unilaterally establishing a framework that not only undermines fundamental democratic rights but also places at risk the principles underlying the labour law regime in Canada with the goal of dictating the outcome of bargaining without regard to balancing the their budgetary agenda with the legitimate aspirations of workers. This fosters a climate wherein labour relations are politicized. The amendments in this Act clearly constrain bargaining and grievance recourse mechanisms in a way which will reduce government accountability and remove checks and balance on what will become unilateral, and potentially wasteful, labour relations practices. Undue interference in the process undermines the critical role that neutral third party Public Interest Commissions (PICs), adjudicators and Boards and Tribunals play in assisting the parties to effectively resolve disputes. This represents an attack on freedom of association and the role of labour boards.

The rules surrounding bargaining, choice of dispute resolution, essential services designation, and arbitration need to be looked at as a whole – a process which when it works best results in mutually agreed to terms and conditions of employment.

The PSAC is deeply concerned that these proposed changes to the process of collective bargaining represent a fundamental rewrite of the rules so as to change the role of the government in bargaining. Rules in interest arbitration are being rejigged at the same time the government is giving itself the unilateral right to determine who is deemed essential and therefore forbidden from exercising their right to withdraw their

labour. This brings in to question the legitimacy of the process of dispute resolution, undermining the balance that was struck in labour relations. The changes take away the tools to effectively deal with conflict over the terms and conditions of employment of those working in the federal public service.

The PSAC wishes to express that it is not only against the substance of the changes in the Bill but also the manner in which these changes are being introduced. We believe it signals the end of a long- standing practice of consultation regarding changes in the labour relations regime. Not only does this mean that decisions are being proposed in Parliament absent all the relevant evidence and analysis, the process is troublesome due to the secretive, arbitrary, and unilateral nature in which it is being developed. This no doubt is an indicator of the deteriorating state of labour relations in the federal public service.

To illustrate how different this process is from what has occurred in the past one only has to look at the past decade and a half. In 1999, following an era of downsizing and increased pressures and challenges being placed on the federal public service the government of the day embarked on a review of the state of union-management relations and the collective bargaining relationship in place under the *Public Service Staff Relations Act (PSSRA)*, ultimately resulting in the Fryer Report[1] and the Privy Council Task Force on Modernizing Human Resources Management.

These processes led, in 2003, to the introduction of the *Public Service Modernization Act,* which changed the way unions bargain within the federal public service as well as the recourses available to employees involved in labour disputes. In 2005, two components of the *PSMA* came into force, effecting significant changes to the labour relations framework of the federal public service; they are the *Public Service Employment Act* ("*PSEA*") and the *Public Service Labour Relations Act* ("*PSLRA*"). Both pieces of legislation contain clauses providing for a five (5) year legislative review.

The review was launched in 2009 when "the Prime Minister appointed Susan Cartwright, Senior Advisor to the Privy Council Office, to lead the process for both Acts, and prepare a report for the President of the Treasury Board to be tabled in Parliament in early 2011."[2] While PSAC had concerns with the manner in which the review was conducted, it was provided with an opportunity for input.

None of the significant changes being proposed in this Bill were recommended in the five-year review.

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[1] Advisory Committee on Labour Management in the Federal Public Service, *Working Together in the Public Interest,* 2001(available on-line athttp://www.johnfryer.ca/Welcome_files/English%202001.pdf)

[2]Treasury Board of Canada, , "Report of the Review of the Public Service Modernization Act, 2003," 2011, available on-line at http://www.tbs-sct.gc.ca/psma-lmfp/index-eng.asp.

In stark contrast to that earlier reform process, this government has opted to develop far-reaching plans in private, insert them in a budget bill and fast track their implementation without benefit of discussion, study or open debate regarding the development of an improved labour relations framework. Further deepening concern on the part of bargaining agents and experts in the labour relations field is the seeming lack of transparency regarding the implementation of these changes and what they will mean for the upcoming rounds of bargaining.

PART B: COLLECTIVE BARGAINING REDEFINED

1. ESSENTIAL SERVICES (Division 8 – PSLRA)

The PSAC strongly objects to the proposals relating to essential services designation. We have a long standing commitment to ensuring the safety and security of the public, while at the same time respecting our member's lawful right to strike. Our members take their duties and responsibilities to the public very seriously.

The PSAC believes that service levels during a strike should be maintained at a level which ensures that there is no possible danger to the safety and security of the Canadian public. These proposals do nothing in that regard, particularly as they have reduced the input of the representatives of those who directly provide the services. The employer is proposing changes to the already employer-friendly *PSLRA* to maintain levels of service which would effectively make the workplace "business as usual", eliminating the right to strike for what we believe will be a larger number than is currently the case, minimizing the effect of a strike where available and undermining the constitutional rights of our members to take job action.

Over the last several years the PSAC has worked in collaboration with the employer to ensure that the safety and security of the public were never compromised if union members were to lawfully strike. In fact, the PSAC has agreed to thousands of positions being deemed essential. Examples include: those required to protect the safety and security of the border, correctional institutions, food safety and financial security of those members of the public most in need.

Under the current provisions the parties negotiate which services are essential and the PSLRB steps in where they fail to agree. The employer then has the exclusive right to determine the level of the service that must be provided in the event of a strike. The parties then negotiate which positions are required and again, failing agreement the PSLRB will make the final decision. Although the current process has been lengthy, it has resulted in several signed Essential Services Agreements that meet the requirements of the current *PSLRA*.

The changes proposed in Bill C-4 fail to recognize the collaborative work the PSAC and the employer have done to ensure that there is a balance between the safety and security of the public and our members lawful right to strike. The government has also failed to recognize that the current legislation and jurisprudence require the labour

board to err on the side of safety and security of the public. As such, this Bill, giving the employer the exclusive right to designate any position as an essential service without recourse to the PSLRB, can only be characterized as a direct attack on the right to strike.

Representatives of the employer have testified that the definition of essential services has not changed. A careful reading of the Act shows this to be incorrect.

The current PSLRA, s. 4, defines "essential service" as:

> "a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public."

Section 294 of Bill C-4 repeals that definition. It replaces it with one which reads

> ""essential service" means a service, facility or activity of the Government of Canada that has been determined under subsection 119(1) to be essential."

The proposed changes provide the employer with the ability to act unilaterally without recourse to the PSLRB in the event of a dispute. The role for the union in the process is now relegated to a superficial process of consultation so thoroughly inconsistent with the notion of meaningful consultation as to render the process meaningless and void of the fairness that is needed.

This is particularly true of consultation given the lack of effective recourse to a third party on the substantive issues before the decision maker. If passed, the revised *PSLRA* removes any role for the PSLRB in resolving disagreements over what work is to be considered essential. This give the employer the unfettered right to determine the positions and the people.

The PSAC also wishes to point out that not only does the employer now have unilateral authority to dictate who is essential, they have rewritten the rules governing essential services to include as essential what were previously non-essential duties. This is fraught with the potential to undermine the right to strike and to in practical terms, deem essential duties which are not.

We are deeply concerned about this attack on the right to strike that the changes to essential services provisions represents by turning over the power to determine, unilaterally, essential services and by extension the manner in which disputes will be resolved. The employer will now be able to determine who has the right to exercise the arbitration option. It will be removed for all bargaining units except those where 80 per cent of employees perform work that has been designated "essential". Groups that do not meet the 80 per cent threshold are automatically put on the conciliation-strike route. In the few cases where arbitration will be allowed, the process will no longer be independent of government. Arbitrators will be limited to consider only two factors: recruitment and retention, and the government's fiscal circumstances relative to its budgetary policies.

Relatively speaking, the existing provisions of the *PSLRA* allow for consideration of the interests of employers, unions, and the public. Bill C-4 disrupts all semblance of balance. This is an attempt to rewrite the rules to give the employer unfettered discretion. It will, without a doubt lead to poorer results and more labour conflict. Not only have they eliminated the obligation to negotiate with the union they have taken away the authority of the PSLRB to fulfill its dispute resolution function. This is clearly aimed at stripping the right to strike from workers in a manner that goes well beyond any public interest rationale.

We recommend that the proposed changes to the essential services provisions of the PSLRA be deleted and that consultation take place to develop new provisions.

2. **DISPUTE RESOLUTION (Division 6 – PSLRA)**

In the federal public service, the right to elect the method of dispute resolution, either conciliation/strike or arbitration has been in place since 1967. While PSAC submits that a better option would be to place the federal labour relations regime under provisions similar to that of the Canada Labour Code, we recognize that the current systems does represent a finely struck balance. As legal experts have stated:

> The union's right to elect arbitration creates a level playing field, as its right is similar to Parliament's ability to legislate an end to a labour dispute and order arbitration instead. (Nelligan/O'Brien/Payne – Bill C-4: A Series of Retrograde Changes to Labour Relations in the Federal Public Service)

Under the current proposals, dispute resolution, including access to the right to strike is determined unilaterally. Essentially, this proposed legislation gives the employer veto power over what method of dispute resolution will be employed. Arbitration is only available by agreement or where the employer has determined that 80 per cent of the unit is essential. This has the potential for the employer to utilize its power of designation in such a way that it is able to dictate the effectiveness or a strike, for instance, where the numbers fall minimally below the 80 per cent threshold.

Furthermore, separate agencies are required to seek approval from the Treasury Board President before consenting to binding arbitration.

The proposed changes to the dispute resolution provisions of the PSLRA are indicative of how Bill C-4 is a flawed process of change. These changes should be deleted and a broad process of review and consultation regarding changes should take place.

3. **ARBITRATION (Divisions 9 and 10 – PSLRA)**

PSAC finds the proposed changes to the Public Interest Commission (PIC) and arbitration processes deeply problematic. This Bill establishes rules that will govern

arbitration in the employer's favour at the same time that it has given itself the ability to determine who does or does not have access to this method of dispute resolution.

The Government has further restricted the scope of free collective bargaining with its limitations on what Public Interest Commission and arbitration boards must take into account when fashioning an award. This hinders effective and harmonious labour relations by further restricting what can be considered and establishing barriers to the resolution of issues of central concern to federal public sector workers in their day-to-day work lives. It does so by specifically requiring PICs and arbitration boards to give primary consideration to recruitment and retention and Canada's fiscal circumstances over other factors.

This threatens the independence of arbitrators rendering decisions as they now must consider and give preponderance to "Canada's fiscal circumstances relative to its stated budgetary policies". This essentially ties the hands of arbitrators, forcing them to follow the political direction set by the government of the day rather than the objective evidence before them. In most other regimes, the role of arbitrators is to render awards which meet a much more balanced set of factors, including settlements that have been freely reached through collective bargaining.

Also, this Bill dictates to the arbitrator (or PIC) how compensation is measured. It cannot be based on wages alone but on the broader concept of total compensation which includes aspects which cannot be bargained. Section 309 of the Bill amends subsection 149 (1) of the *PSLRA*, to require that an arbitration board set out the reasons for its awards, and in so doing, to take into account all terms and conditions provided to employees (i.e. total compensation). Similarly, s. 317 of the Bill amends s. 176 of the *PSLRA* and places the same conditions on PICs. In ss. 310 and 318, the Bill gives the Chair of the PSLRB the right to direct the arbitration board or PIC, as the case may be, to review their report if the Chair is of the opinion the board or PIC has failed to fully consider the factors listed in the Act or if they have been improperly applied.

We recommend that the proposed changes to the arbitration, PIC and related provisions of the *PSLRA* be deleted and that consultation take place to develop new provisions.

4. COMPENSATION RESEARCH

The PSAC wishes to express its disappointment with the proposed elimination of the compensation analysis and research function or the Public Service Labour Relations Board.

In our view, after the Pay Research Bureau was disbanded in 1993, there was a lack of reliable, independent information regarding how federal public sector workers fare against other employees in the labour market. The lack of such information led to more conflictual labour relations.

This fact led to a recognition that the parties could benefit from pay research generated by an independent source. The Fryer Commission recommended that a pay research function be created under the auspices of the National Joint Council.[3] At the same time, the NJC created a Joint Compensation Advisory Committee to begin the process of undertaking joint research, and some bargaining agents and employers were completing joint research projects that helped result in collective agreements. And it was in this context that some unions and employers agreed to do joint studies to look at compensation of groups where evidence suggested that there were wage gaps. For example, the Operational Services (SV) pay study in 2002 looked at the labour market in relation to skilled trades, unskilled labourers, firefighters and other operational group members for the SV bargaining unit, and the pay study helped the parties reach a collective agreement.

It is within this context, that the PSLRB Compensation Analysis and Research Services (CARS) was established in 2006, following adoption of the *Public Service Modernization Act*.

The current wording of the *PSLRA* indicates the purpose of CARS' functions:

> **Compensation analysis and research services**
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> 16. (1) The compensation analysis and research services to be provided by the Board include conducting compensation surveys, compiling information relating to compensation, analyzing that information and making it, and the analysis, available to the parties and to the public, and conducting any research relating to compensation that the Chairperson may direct.

The founding of CARS reflected the principles of consultation and co-development recommended in the Fryer report and written into the *PSLRA*. While it took some time to get off the ground, CARS was by fall 2013 well on its way to providing the parties with research results in time for the upcoming rounds of negotiations. PSAC was initially pleased with the establishment of the service as it was viewed as a means of providing compensation analysis to assist the parties during collective bargaining. In the 2007-2008 PSAC-Treasury Board bargaining round, CARS oversaw a study for members of the TC group.

Passage of the Bill in its current format would bring to an immediate end the PSLRB's Compensation Analysis and Research Services (CARS), and would bring an end to the independent compensation research being conducted by CARS. At precisely the same time that the Bill places more stringent requirements on PICs and Arbitration Boards regarding their respective recommendations and awards regarding compensation, it removes from the Public Service Labour Relations Board the important mandate to

[3] Advisory Committee on Labour Management in the Federal Public Service, *Working Together in the Public Interest,* 2001(available on-line athttp://www.johnfryer.ca/Welcome_files/English%202001.pdf)

provide the parties with the independent compensation research that is intended to assist the parties in reaching agreements.

CARS was created to facilitate the collective bargaining process by providing the parties with an independent source of compensation information and it was created to serve the public interest by having this research made public. By cancelling CARS, Bill C-4 serves only the interest of the government as employer, which has clearly indicated its intention to conduct pay research on its own by contracting out these services to private companies, without any consultation or co-development of the research studies.[4] Cancellation of CARS returns us to an era where the employer and unions bring independent sources of data to the table and to PICs and arbitration boards, and are left only to argue over whose study is right. It does so precisely at the same time that arbitration boards and PICs require more independent research.

The official five year review of the *Public Service Modernization Act*, conducted by officials at the Treasury Board Secretariat under the leadership of Susan Cartwright, did not recommend removing compensation research from the mandate of the PSLRB. In fact they recommended enhancing the role by ensuring that the function at the PSLRB is properly resourced.[5] The PSAC also recommended that the CARS function be strengthened through proper resourcing, and through the establishment of an Advisory Committee representative of the parties and appointed by the parties.[6]

The PSAC is opposed to sections 295, 296 and 298 of Bill C-4 and supports compensation research remaining a function of the PSLRB.

PART C: RECOURSE RIGHTS REDEFINED (PART 2 – PSLRA)

Bill C-4 redefines the recourse available to unionized public sector workers through changes to the grievance process, limitations on rights under the *PSLRA* and *CHRA*. These proposals include limitations and restrictions on who can file different types of grievances. It adds the requirement of bargaining agent support to file all grievances, except those dealing with human rights issues and the cost of adjudication to be borne by the union and the employer with no consequent changes to the process whereby adjudicators are selected. The new legislation removes the possibility of retroactive policy grievance awards. It also limits the arguments employees can make when opposing unjust layoffs.

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[4] Don Butler, "Federal government puts public service compensation under microscope: 'Duelling studies' will compare wages, benefits with those earned by other workers," *Ottawa Citizen,* September 23, 2013 (available on-line at http://www.ottawacitizen.com/business/Federal+government+puts+public+service+compensation+under+microscope/8948813/story.html

[5] Treasury Board Secretariat, "Report of the Review of the Public Service Modernization Act, 2003," 2011, available on-line at http://www.tbs-sct.gc.ca/reports-rapports/psma-lmfp/psma-lmfptb-eng.asp

[6] Public Service Alliance of Canada, "PSMA Five Year Legislative Review," 2012. Available on-line at http://www.psac-afpc.org/documents/PSMA-5-year-legislative-review-eng.pdf

Also, the PSAC is deeply concerned about the changes to the qualifications of the members of the newly created Public Service Labour Relations and Employment Board. There is no longer a requirement that they possess any knowledge of labour relations. This creates the possibility or probability (if one assumes that changes are made for a reason) that unqualified members will be appointed to the Board.

1. POLICY GRIEVANCES

One of the most alarming changes to the recourse mechanisms found in C-4 relate to the proposed changes with regards to policy grievances. The PSAC objects to the changes to s. 220 of the *Public Service Labour Relations Act*.

Policy grievances were introduced into the federal government labour relations regime with the proclamation of the *Public Service Labour Relations Act* in 2005. Slow to be used at first, their use has increased as a means of streamlining the grievance recourse process. Where an issue regarding the broad interpretation of a collective agreement arises, bargaining agents have been able to use the policy grievance option as a way trying to resolve an issue that might otherwise be the subject of dozens if not hundreds of individual grievances.

Bill C-4 takes a significant step backwards by placing very stringent restrictions on the use of policy grievances, and by limiting the recourse that adjudicators and the Board can order when ruling on policy grievances. It is the position of the PSAC that this is inconsistent with stated objectives of ensuring more efficient and effective dispute resolution. Why the employer would rather deal with disputes as series of individual matters rather than deal with issues of common concern in a proactive manner can only be explained as a means to turn back the successes that have been achieved by unions. This change will unquestionably lead to more grievances.

The change to s. 220 contemplated by s. 331 of Bill C-4 would only allow policy grievances to be filed where an individual grievance could not be filed, rendering the section almost entirely irrelevant. The existing language of s. 220 (1) provides sufficient guidance regarding when a policy grievance may be filed: “If the employer and a bargaining agent are bound by an arbitral award or have entered into a collective agreement, either of them may present a policy grievance to the other in respect of the interpretation or application of the collective agreement or arbitral award as it relates to either of them or to the bargaining unit generally**.**” (emphasis added).

The official five-year review of the *PSLRA* did not recommend a change in this section of the Act. While noting some administrative concerns regarding policy grievances, the five-year review recommended that employers and bargaining agents work out how best to manage the filing of policy grievances:

> 7.6 The Chief Human Resources Officer and bargaining agents must together ensure that the process and procedure for filing policy grievances is clear, efficient and effective, particularly in terms of where responsibility rests for

bringing policy grievances and for dealing with the same issues through more than one type of grievance.[7]

The PSAC also objects to the change proposed in s. 334 of the Bill which amends the PSLRA by limiting the remedies available for policy grievances. It prevents adjudicators from issuing awards that have a retroactive effect. Under the existing legislation, an adjudicator could find that a policy grievance relates to a bargaining unit generally, and could order a remedy that applies to those employees and make it retroactive. An example of a relevant policy grievance is one filed by PSAC and PIPSC regarding the application of the alternation provisions under our respective Workforce Adjustment Appendices. The PSLRB adjudicator in that case made a ruling regarding the appropriate application of the appendices in the case of alternations. Following the decision, the parties were able to negotiate a settlement as to how the decision would apply to those employees who had been negatively impacted by departments who had not been following the collective agreement. That settlement dealt with individual circumstances that were retroactive in nature. We did not need to go back to the PSLRB adjudicator to get a specific remedy ordered, but had we needed to, such remedy would have required retroactive application, or it would have meant nothing to those employees who had been negatively impacted by the employer's failure to appropriately apply the collective agreement.[8]

The changes proposed by ss. 331 and 334 would represent a step backwards in federal labour relations, and would inevitably result in an increase in individual grievance remedies, which would have the effect of increasing the level of administrative and adjudication work being undertaken by the PSLRB or PSLERB.

These changes should not have been introduced into budget legislation, or any changes without prior debate and discussion with employers, bargaining agents and the Board, and further indicates why *PSLRA* changes should be removed from this Bill.

2. THE END OF SELF-REPRESENTATION FOR UNIONIZED WORKERS

Unionized workers have lost the right to represent themselves individually on discipline and termination grievances, and on grievances unrelated to the collective agreement unless their grievances address human rights violations. This applies both to grievance presentation at the internal levels and to referral to adjudication. They now require bargaining agent support in accordance with the proposed changes found in ss. 325(2) and 326(2).

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[7]Report of the Review of the Public Service Modernization Act, 2003, http://www.tbs-sct.gc.ca/reports-rapports/psma-lmfp/psma-lmfp08-eng.asp#s7.7.
[8]Public Service Alliance of Canada and Professional Institute of the Public Service of Canada v. Treasury Board of Canada (2013 PSLRB 37), April 9, 2013 http://pslrb-crtfp.gc.ca/decisions/summaries/2013-37_e.asp.

Non-unionized workers retain the right to present individual grievances, including discipline grievances, without any form of endorsement from another body.

This Bill gives both unionized and non-unionized workers the right to represent themselves on matters concerning alleged violations of certain provisions of the *CHRA.* The Bill is silent as to whether union representation is required when a grievance concerns the discriminatory application of a collective agreement article. It is also silent as to whether a union would have standing in a matter where an employee's individual human rights grievance, filed without union approval, addressed issues of collective agreement interpretation.

3. "BAD FAITH" AND "TRIVIAL" GROUNDS FOR EXCLUSION OF GRIEVANCES

The PSAC wishes to express its concern regarding what appear to be new grounds for the dismissal of grievances. Formerly, adjudicators could dismiss grievances which were frivolous or vexatious (*PSLRA* s. 226). This Bill has added the terms *"bad faith"* and *"trivial"* to this list, at two places. The Employer may dismiss grievances which are deemed to be in bad faith or trivial at internal levels of the grievance process (Bill C-4, s. 325(3), creating s.208(9)) and the Board may also dismiss grievances which deemed to be in bad faith or trivial (Bill C-4, s. 333(2)). This language – which does not exist under the *Canadian Human Rights Act* – is also applied to human rights grievances.

4. COSTS OF ADJUDICATION

The PSAC has concerns regarding the provisions regarding the costs associated with adjudication. There are two standards: adjudication is free for non-union members, but costly for those who have a union.

Section 335 creates ss. 235 (1), 235.1 and 235.2, of the new *Act* and provides that the costs of adjudication are to be born equally by the employer and the bargaining agent for individual grievances relating to the collective agreement,_excepting human rights grievances, and for policy and group grievances. The *PSLRA* had costs provisions which were never invoked. This may appear to be an "improvement" from the *PSLRA*, which held the bargaining agent solely liable <u>but</u> the reality is that costs were never levied under the *PSLRA,* which allowed discretion in this regard. In matters of discipline and discharge for unionized workers costs are to be shared by the bargaining agent and the deputy head in question (Bill C-4, s. 235 (2)). The proposed changes make cost recovery mandatory. No thought appears to have been given to how intertwined human rights and collective agreement interpretation matters will be costed, nor has "adjudication" been defined for the purposes of cost recovery.

Given that the only way for bargaining agents to raise revenue is through dues collection, this means that union members will pay for their adjudications. However this cost recovery is only for unionized employees. Non-unionized employees have their costs covered by the Board (Bill C-4, s. 235(6)), regardless of the topic of their

grievances. Only in the case of grievances concerning human rights grounds are the costs borne by the Board for unionized workers. This unfairly penalizes union members.

The sharing of arbitration costs is a feature of most Canadian labour laws, but so is union and employer mutual agreement on selection of arbitrators. If the government believes that it is fair to share arbitration costs rather than having these be provided through the Board, then they should be prepared to look at a legislative framework modelled on the *Canada Labour Code*.

5. JUDICIAL REVIEW AND ENFORCEMENT

The proposed legislation reduces government accountability in labour relations matters by curtailing the oversight of the Federal Court.

Under the *PSLRA,* recourse rights with respect to decisions of the Board differed from recourse rights with respect to decisions of adjudicators. Decisions of the Board went directly to the Federal Court of Appeal, and could only be reviewed with respect to limited grounds.

Decisions of adjudicators were reviewable by the Federal Court, and could then be appealed to the Federal Court of Appeal, and were reviewable on the full grounds enumerated by s. 18 of the *Federal Courts Act.* In creating the new *PSLREB,* this Bill does away with the distinction between adjudication and Board decisions, adopting the same restrictive grounds of review for both.

While these new review provisions are identical to the review provisions for decisions of the Board under the *PSLRA,* Bill C-4 further provides for changes that make this provision applicable to decisions of adjudicators and decisions regarding staffing.

As well, under the *PSLRA*, there were no restrictions on the filing of an adjudicator's order in Federal Court for the purposes of enforcement (*PSLRA*, s. 234), although the *PSLRA* did impose restrictions when an order of the Board was filed (*PSLRA,* s.52). Under the *PSLREA*, these restrictions now apply to both Board and adjudication decisions (*PSLREA* s. 35(1) and s. 382 of Bill C-4 creating the new section 234 of the *PSLREA*). Adjudication orders will now be more difficult to enforce.

6. EXTENSIONS OF TIME

The PSAC is concerned that the proposed amendments regarding extensions of time will unfairly limit access to recourse. Section 237 of the PSLRA is amended by Bill C-4 such that regulations made under the *Act* may provide for extensions oftime only in circumstances that the Board considers to be exceptional. It is worth noting that this includes the internal employer levels of the grievance process.

7. LAY-OFFS

There are significant changes to recourse for laid off workers. Previously, the *PSEA* s. 64(2) provided for recourse where"some but not all of the employees in any part of the deputy head's organization will be laid off." Bill C-4, at ss. 348 and 349 qualifies "some but not all" as follows: "some but not all of the employees in any part of the deputy head's organization who occupy positions at the same group and level and perform similar duties are to be laid off."

This will limit rights of workers on layoff. It also creates new possibilities for the Employer to argue against recourse rights by objecting that there were no other employees performing similar duties.

8. HUMAN RIGHTS

The PSAC is concerned about the changes to recourse rights with regards to human rights complaints. Bill C-4 ends recourse to the *Canadian Human Rights Act* for all federal public sector workers (p. 250, s. 340) while it imports selected *CHRA* provisions. *CHRA* rights are preserved partially, including the *CHRA*'s one year time limit (although, not apparently, the *CHRA*'s ability to vary that time limit where appropriate). The Bill also allows employees to file and refer to adjudication grievances regarding violations of ss. 7, 8, 10, or 14 of the *CHRA.*

However, Bill C-4 gives the Canadian Human Rights Commission (CHRC) no standing at grievances or complaints of any nature, and the new PSLREB does not have any powers or mandate whatsoever which mirror or even resemble CHRC's investigative powers. Also, we are deeply concerned over the loss of the specialized expertise of the CHRC.

The PSAC therefore requests that the changes to the provisions governing the grievance process be removed from the Bill and that consultation occur with regard to how to improve the recourse framework under the PSLRA.

PART D: CONCLUDING RECOMMENDATIONS

In the future, Boards and adjudicators and judges will be asked to interpret legislative provisions resulting from Bill C-4 and determine "what was the will of Parliament in passing this Bill?"

As Parliamentarians, how is it possible for you to comprehend the impact of the changes you are being asked to pass, when changes of this magnitude are being made under strict timelines connected with the passage of a budget bill? As Members of this Parliament, do you really know what you are "willing" into law?

Bill C-4 proposes to make widespread and fundamental changes to the labour relations regime governing all federal government workers, a regime that has been in place since

the late 1960s. We believe you cannot be accountable the changes you are making when you are given mere hours to study the changes proposed. It is more responsible for you to carve Divisions 17 and 18 out of this bill and insist that the government and Treasury Board and other employers engage in a broader discussion involving all parties regarding further modernization of the labour relations regime.

In summary:

- The PSAC recommends removal of Divisions 17 and 18 from this budget bill and recommends that the government engage in consultation with bargaining agents, employee groups and experts in the field in order to ensure fundamental legislative changes governing the federal workplace are carried out in a manner that fosters effective and harmonious labour relations.

- The PSAC further proposes that a framework based on what exists in other Canadian jurisdictions in the private sector be used as the basis for an improved, more effective means of governing labour relations in the federal public service.